

DOCKET FILE COPY  
ORIGINAL

FCC MAIL SECTION

FCC MAIL SECTION

Oct 20 Before 8 AM '92  
Federal Communications Commission  
Washington, D.C. 20554

Oct 20 8 48 AM '92

RECEIVED BY

FCC 92-438  
RECEIVED BY

In the Matter of  
  
Advanced Television Systems  
and Their Impact upon the  
Existing Television Broadcast  
Service

MM Docket No. 87-268 ✓

MEMORANDUM OPINION AND ORDER/THIRD REPORT AND ORDER/  
THIRD FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: September 17, 1992 ; Released: October 16, 1992

Comment Date: December 21, 1992  
Reply Comment Date: January 29, 1993

By the Commission: Commissioners Marshall and Duggan issuing separate  
statements.

TABLE OF CONTENTS

Topic	Paragraph
I. INTRODUCTION . . . . .	1
II. ELIGIBILITY . . . . .	8
A. Initial Eligibility . . . . .	8
1. Initial Restriction to "Existing Broadcasters": Background/Report and Order . . . . .	8
2. Ranking: Report and Order . . . . .	10
B. Renewal Challenges: Reconsideration/Further Notice. . . . .	11
C. Dual Network Rule: Report and Order. . . . .	14
III. APPLICATION AND CONSTRUCTION PERIOD . . . . .	16
A. General Application/Construction Deadlines: Reconsideration/Preliminary Decision . . . . .	16
B. Noncommercial Stations: Reconsideration/Further Notice. . . . .	28
C. Other Issues . . . . .	30
1. Assignment of Call Signs: Further Notice . . . . .	30
2. Other Spectrum Uses: Reconsideration/Report and Order. . . . .	31
IV. ALLOTMENT/ASSIGNMENT ISSUES . . . . .	32
A. Assignment Methodology: Report and Order . . . . .	32
B. Noncommercial Reserve: Report and Order . . . . .	33
V. LOW POWER AND TRANSLATOR SERVICES . . . . .	35
A. Secondary Status and Other Issues: Reconsideration . . . . .	35
B. Low-Power Television Service Conversion: Report and Order. . . . .	40

VI.	CONVERSION TO ATV	.41
A.	Conversion Date: Reconsideration	.41
B.	Conversion Date: Preliminary Decision	.44
C.	Periodic Reviews: Preliminary Decision	.53
D.	Election: Reconsideration/Report and Order	.55
E.	Future Technological Advances: Reconsideration/Further Notice	.58
F.	Production Standard: Report and Order	.60
G.	Noncommercial Television Waiver: Reconsideration	.62
VII.	SIMULCASTING	.63
A.	Timetable for 100 Percent Simulcasting:	
	Reconsideration/Preliminary Decision	.63
B.	Definition of Simulcasting: Preliminary Decision	.72
C.	"ATV Programming": Reconsideration/Further Notice	.76
VIII.	PATENT LICENSING AND RELATED ISSUES: REPORT AND ORDER	.78
IX.	COMPATIBILITY	.80
A.	Other Transmission Forms and Media Applications:	
	Report and Order	.80
B.	Dual-Mode Receivers: Further Notice	.81
C.	Audio Advances: Report and Order	.82
X.	NEW DEVELOPMENTS : REPORT AND ORDER	.83
XI.	PROCEDURAL MATTERS	.85
	A. Notice and Comment Provisions	.85
	B. <u>Ex Parte</u> Rules	.86
	C. Regulatory Flexibility Act Statement	.87
XII.	ORDERING CLAUSES	.88

APPENDIX A: List of Parties

APPENDIX B: Initial Regulatory Flexibility Statement

APPENDIX C: Final Regulatory Flexibility Statement

APPENDIX D: List of Unpublished Documents

## I. INTRODUCTION

1. This Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making (Third Report/Third Notice) resolves and in some cases, reconsiders, a number of outstanding issues and solicits further comment on other issues fundamental to implementation of advanced television (ATV) service in this country.<sup>1</sup> This proceeding was initiated in

<sup>1</sup> ATV refers to any television technology that provides improved audio and video quality or enhances the current television broadcast system. The existing broadcasting system is referred to as NTSC, after the National Television Systems Committee, an industry group established in 1940 to develop technical standards for television broadcasts. The generic term "ATV" includes High Definition Television (HDTV) systems. HDTV systems aim to offer approximately twice the vertical and horizontal resolution of NTSC receivers and to provide picture quality approaching that of 35 mm film and audio quality equal to that of compact discs.

While the issues are obviously interrelated, we have indicated throughout this decision where we are making decisions arising from

July 1987,<sup>2</sup> and in September 1987 we established the Advisory Committee on Advanced Television Service (Advisory Committee) to advise us on the technical and public policy issues concerning ATV.<sup>3</sup>

2. We have previously decided that an ATV system that transmits the increased information of an ATV signal in a separate 6 MHz channel independent from an existing NTSC channel will allow for ATV introduction in the most non-disruptive and efficient manner.<sup>4</sup> We also decided in the Second Report/Further Notice to limit initial eligibility for ATV frequencies to existing broadcasters, to adopt a two-year deadline for broadcasters to apply initially for a paired ATV channel, and a three-year deadline for construction of an ATV facility once assigned. We also sought comment on a number of issues, including proposals to establish a firm date for ATV conversion of 15 years from either selection of an ATV system or the date a Table of ATV Allotments is effective, whichever is later, and to review, in 1998, the propriety of any conversion date we will have set. Also, we solicited comment on various proposals for implementation of a simulcasting requirement.<sup>5</sup>

---

reconsideration petitions, final decisions based on comments received in response to Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 (1992) (Second Report/Further Notice), or asking for additional comment on further questions to be decided. We will issue a codification of the ATV rules we adopt or modify herein, with appropriate effective dates, at a later stage in this proceeding.

2 Notice of Inquiry, 2 FCC Rcd 5125 (1987) (First Inquiry). See also Tentative Decision and Further Notice of Inquiry, 3 FCC Rcd 6520 (1988) (Second Inquiry), First Report and Order, 5 FCC Rcd 5627 (1990) (First Order), Notice of Proposed Rule Making, 6 FCC Rcd 7024 (1991) (Notice), Second Report/Further Notice, *supra*, and Second Further Notice of Proposed Rule Making, FCC 92-332 (released Aug. 14, 1992) (Second Further Notice).

For a fuller description of the history of this proceeding, see Second Inquiry, 3 FCC Rcd at 6521-6523 & n. 15. See also Notice, 6 FCC Rcd at 7024.

3 The Advisory Committee has established three subcommittees--the Planning Subcommittee (PS), Systems Subcommittee (SS), and Implementation Subcommittee (IS)--which are organized into various working parties (WP). The working parties frequently referred to herein will be designated as follows: Planning Subcommittee Working Party 5 (PSWP5), Systems Subcommittee Working Party 3 (SSWP3), and Implementation Subcommittee Working Party 2 (ISWP2).

4 First Order, 5 FCC Rcd at 5627-29.

5 We received 36 comments, seven reply comments, and several informal comments and reply comments, as well as six petitions for reconsideration and/or clarification following the Second Report/Further Notice, two oppositions to the petitions for reconsideration and/or clarification, five pleadings supporting or commenting on the petitions for reconsideration and/or

3. Among the preliminary decisions we make today, we are granting existing broadcasters three years from the effective date of ATV system selection or an ATV Allotment Table, whichever is later, in which they exclusively may apply for a preferred or "set-aside" ATV channel, and a total of six years both to apply for and to construct an ATV facility (so that the earlier broadcasters apply, the longer they will have to construct).<sup>6</sup> We are also allowing broadcasters seven years from the effective date of ATV system selection or an ATV Allotment Table, whichever is later, in which to implement 50 percent simulcasting on paired NTSC-ATV stations, and nine years from that same start date to implement 100 percent simulcasting. In addition, broadcasters must convert wholly to ATV (and to cease broadcasting in NTSC) in 15 years.<sup>7</sup> These periods were chosen to encourage the timely and orderly introduction of ATV without disrupting established service or imposing undue risks or costs on broadcasters or the public. The scheduled milestones represent a balancing of many interests and factors and, of necessity, rely on projections regarding the acceptance of ATV by the public and the availability of ATV equipment and programs. Because actual developments may depart from our projections, we also have adopted a timetable for the review of information relating to these time periods. Assuming that we adopt an ATV standard and a table of ATV allotments by late 1993, the review of the indicated deadlines would be completed by these dates:

1993 -- Review of application and construction deadlines

---

clarification, and two replies to the oppositions. Pleadings filed after the July 17, 1992, deadline for comments and the August 17, 1992 deadline for reply comments have been treated as informal comments and informal reply comments respectively. We list the parties filing these pleadings and the abbreviations we use for them in Appendix A. The Small Business Administration (SBA) filed a motion for leave to file comments out of time. In light of SBA's role as monitor of agency compliance with statutory regulatory flexibility requirements, see 5 U.S.C. § 612, and the important insights it can offer in this capacity, we grant this motion.

For the convenience of interested parties, unpublished documents to which we refer are listed in Appendix D. These documents have been made part of the docket and are available in the Commission's public reference room. Copies are also available, for a fee, from the Commission's independent contractor, Downtown Copy Center, 1114-21st Street NW, Washington, D.C. 20036, (202) 632-1422.

<sup>6</sup> We sometimes refer herein to the additional 6 MHz channel which existing broadcasters will be awarded on an interim basis for the transition to ATV as the "conversion channel" and to the 6 MHz channel they will be required to surrender at the point of full conversion as the "reversion channel". Second Report/Further Notice, 7 FCC Rcd at 3343.

<sup>7</sup> We will issue a codification of the ATV rules we adopt herein, with appropriate effective dates, at a later point in this proceeding.

1996 -- Review of construction deadline

1999 -- Review of simulcast and conversion deadlines

2002 -- Review of simulcast and conversion deadlines

2008 -- Review of conversion deadline

4. At the appropriate time, we will issue a notice asking for factual information and specific data related to the period or deadline undergoing review. Based on the information received, we will then decide what, if any, adjustments should be made. Recognizing that many important decisions will be made by the public and various segments of the television industry with the adopted dates in mind, we caution all parties that we will not make any changes without substantial justification. This adoption of specific dates and periods will lend the degree of certainty necessary for parties to commit to an undertaking of this magnitude, while a schedule for review will permit the government and industry to adapt to unforeseen circumstances warranting modification of this schedule.

5. On the basis of petitions for reconsideration or clarification of the Second Report/Further Notice, we make the following decisions:

- o We reconsider in part our decision regarding the application and construction period. As a preliminary matter, we extend the application deadline to three years after the time that an ATV Allotment Table or an ATV standard is effective, whichever is later, and permit a total of six years for both application and construction to be completed. We provide for further review of this presumptive schedule.

- o We decline to modify our policy regarding the secondary status of low power television service stations and further decline to restrict competition for ATV licenses beyond our three-year initial eligibility restriction in order to favor these LPTV and translator stations.

- o We adhere to our decision that a firm date for conversion for all broadcasters must be established. We find premature a request for waivers of our conversion policy for applicants proposing to build both NTSC and ATV facilities in an area with low ATV receiver penetration that is unserved by a noncommercial station.

- o We adhere to our determination that a 100 percent simulcasting requirement should be adopted at the earliest appropriate time.

6. On the basis of the comments and replies received in response to the Second Report/Further Notice, we take the following actions:

- o We reiterate our decision to limit initial eligibility for ATV frequencies to "existing broadcasters." In the event of spectrum shortfall, we will rank initially eligible parties on the basis of their state of operation and construction.

- o We temporarily suspend the dual network rule during the transition period to permit networks to give their affiliates a second feed for ATV, and provide for review of this temporary suspension in 1999.
- o We decline on procedural grounds to consider the question of the appropriate use for the reversion spectrum that we will reclaim at the time of full conversion to ATV.
- o We defer our decision on an assignment methodology until we have determined the approach that we will use for allotting ATV channels.
- o We agree to create a noncommercial reserve of ATV spectrum.
- o We decline at this time to mandate low power television service conversion to ATV by a certain date.
- o We adopt, as a preliminary decision, a deadline for conversion that is 15 years from the effective date of ATV system selection or a final Table of ATV Allotments, whichever is later. We clarify that, in general, broadcasters that do not convert to ATV will have to cease broadcasting in NTSC at the final conversion date.
- o We decline to adopt production standards for ATV.
- o We adopt, as a preliminary matter, a 50 percent simulcasting requirement, to be imposed one year after the six-year application/construction period ends, and a 100 percent simulcasting requirement to be imposed three years after the application/construction period closes.
- o We define simulcasting as the broadcast on the NTSC channel of the same basic material broadcast on the ATV channel, excluding commercials and promotions, within 24-hours. We will not permit the use of the ATV channel of an ATV-NTSC pair for subscription services.
- o We decline to take further action with respect to patent licensing.
- o We endorse the Advanced Television Systems Committee's plan for documentation of technical specifications once an ATV standard is selected.
- o We encourage the efforts of the Advisory Committee to address any new audio developments and decline to intervene at this stage.
- o We direct the Advisory Committee to monitor developments in Coded Orthogonal Frequency Division Multiplex technology, and to report to us as appropriate. We defer consideration of the potential use of multiple low power transmitters with proponent ATV systems until the Advisory Committee has completed its study of this issue.

7. We also seek comment on the following issues:

- o We seek comment on whether a renewal challenger should be permitted to file a supplemental application for the ATV channel which would be contingent

upon the grant of the challenger's NTSC application. We also seek comment on whether that contingent ATV application should not be subject to a second comparative hearing.

- o We seek comment on whether some additional measure of relief or further action should be taken on behalf of noncommercial stations with respect to the presumptive six-year application/construction deadline.

- o We seek comment on our proposal to assign an existing broadcaster's ATV channel the same call sign as its NTSC channel, with the addition of an appropriate two-letter suffix.

- o We seek comment on whether there is any necessity to exercise our authority under the All Channel Receiver Act to require manufacturers to produce receivers capable of both NTSC and ATV reception and on what the cost to consumers of such a requirement would be.

- o We seek comment on whether future advances in technology that are compatible with any ATV standard selected should be permitted on the conversion channel.

- o We seek comment on whether to permit the use of ATV channels for ancillary purposes in a manner similar to what is now permitted on NTSC.

## II. ELIGIBILITY

### A. Initial Eligibility

#### 1. Initial Restriction to "Existing Broadcasters": Background/Report and Order

8. The Second Order/Further Notice limited initial eligibility for ATV frequencies to existing broadcasters. Included in the class of initially eligible parties are: (1) all full-service television broadcast station licensees; (2) permittees authorized as of the date of adoption of the Notice (October 24, 1991); and (3) all parties with applications for a construction permit on file as of October 24, 1991, who are ultimately awarded full-service television broadcast station licenses.<sup>8</sup> We previously stated several reasons for limiting initial ATV eligibility to existing broadcasters.<sup>9</sup> No parties

---

<sup>8</sup> Second Report/Further Notice, 7 FCC Rcd at 3343. For the sake of brevity, we sometimes refer to this class of initially eligible parties as "existing broadcasters."

<sup>9</sup> Second Order/Further Notice, 7 FCC Rcd at 3342-43. We continue to believe that these eligibility standards are consistent with the United States Supreme Court's decision in Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945) and United States v. Storer Broadcasting Co., 351 U.S. 192 (1956). See Second Report/Further Notice, 7 FCC Rcd at 3342-43; Notice, 6 FCC Rcd at 7025. The several reasons noted above and throughout this proceeding for limiting initial eligibility clearly meet the requirement that an agency have an

petition for reconsideration of our decision to limit initial eligibility.<sup>10</sup>

9. In addition, as proposed, after initial assignments are made, we will assign remaining ATV set-side channels to parties who apply after October 24, 1991 for NTSC facilities and who are authorized to construct in the interim period before initial ATV assignments are made.<sup>11</sup> We defer a decision on the manner by which we will permit these parties to apply for ATV channels until we have reached a decision on the assignment methodology applicable to the class of initially eligible broadcasters.<sup>12</sup> We also observe that these parties

---

"adequate" basis for limiting Ashbacker rights through rules. Altamont Gas Transmission Co. v. FERC, No. 91-1084, slip op. at 5 (D.C. Cir. June 9, 1992). Moreover, to the extent the "compelling" basis test set forth in Aeronautical Radio, Inc. v. FCC, 928 F. 2d 428 (D.C. Cir. 1991), is correct and applicable here, we also believe this restriction meets that standard as well.

<sup>10</sup> Several parties support this decision. EIA/ATV Committee Comments at ii, 3; NTIA Comments at 7 n.5. NCTA, who does not petition for reconsideration on this issue, nonetheless questions our decision to include permittees and applicants who do not have the same experience that existing broadcasters do in the class of initially eligible existing broadcasters. NCTA Comments at 14-15 n.16. In including permittees and applicants, we avoid depriving parties who invested in television broadcasting before they had clear notice of our intent to phase out NTSC broadcasting at a future date, and to cease permitting broadcasts in NTSC. Parties applying for NTSC channels after the date of the Notice have done so with clear forewarning that they may not be permitted to continue in NTSC at some future point, and may not be able to obtain an ATV channel to continue broadcasting after that point. Cf. Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 4 FCC Rcd 4780, 4788 (1989), recon. granted in part on other grounds, 5 FCC Rcd 3902 (1990) (certain pending applications excepted from new rules to protect reliance interests). Moreover, in the event that there should be insufficient spectrum to accommodate all initially eligible parties, we explain just below that we will afford priorities among members of this class based on their level of construction and operation.

<sup>11</sup> This group includes (1) parties ultimately awarded a construction permit based on an allotment petition pending as of the date October 24, 1991, regardless of whether or not the permittee had filed the original allotment petition; (2) parties awarded waivers of the current freeze on television broadcast applications in major markets and who are subsequently awarded an NTSC authorization; and (3) any other parties authorized to construct NTSC facilities in the interim period after October 24, 1991. Second Report/Further Notice, 7 FCC Rcd at 3344. We received no comments in response to this proposal. We observe that, as previously stated, once initial ATV assignments are made, we will cease issuing new NTSC licenses. Second Report/Further Notice, 7 FCC Rcd at 3353.

<sup>12</sup> See infra Section IV.



are also free to petition for the addition of an ATV allotment and to apply for any such allotment prior to the close of the ATV application period limited to initially eligible broadcasters. With the exception of the preference given parties who apply for and are awarded NTSC facilities after October 24, 1991, once the initial eligibility period has passed, the application process will be open to all interested, qualified parties.<sup>13</sup>

2. Ranking: Report and Order

10. Several parties support our proposal to rank initially eligible parties in the event of spectrum shortfall in the following order: (1) licensees and permittees with constructed facilities having program test authority; (2) other permittees; (3) all parties with an application for construction permit pending as of October 24, 1991.<sup>14</sup> We agree with Public Television that ranking eligible parties in this fashion is consonant with our treatment of ATV as an enhancement of existing broadcast service and is likely to expedite the transition to the new technology.<sup>15</sup> For reasons previously given,<sup>16</sup> we decline to afford specific types of full-service broadcasters, such as operating public television stations,<sup>17</sup> priority over others in obtaining a second 6 MHz channel. We also agree with MSTV that we should decline to rank initially eligible parties on the basis of a stricter financial showing,<sup>18</sup> as one party suggests.<sup>19</sup> While it is true that financial criteria help insure speedy ATV implementation by insuring that applicants have the funds necessary to build in a timely fashion, financial requirements are already a part of the broadcast application process.<sup>20</sup> Moreover, broadcast experience and the fact that a broadcaster has a constructed, operational facility will also contribute to speedy ATV

---

<sup>13</sup> Second Order/Further Notice, 7 FCC Rcd at 3342, 3344-45.

<sup>14</sup> Second Report/Further Notice, 7 FCC Rcd at 3343; Joint Broadcasters Comments at 16; Public Television Comments at 10; ATSC Further Comments at 2; MSTV Reply at iii, 6-7.

<sup>15</sup> Public Television Comments at 10.

<sup>16</sup> Second Report/Further Notice, 7 FCC Rcd at 3343.

<sup>17</sup> Public Television Comments at ii, 11-12. Public Television does not make this argument in its reconsideration petition. We address it for the sake of completeness. In response to Joint Broadcasters' concerns about the appropriate inclusion of noncommercial vacant allotments in this group, we adhere to the policies articulated in the Second Report/Further Notice concerning allotment of ATV channels to the noncommercial reserve. 7 FCC Rcd at 3350.

<sup>18</sup> MSTV Reply at 7 n. 2.

<sup>19</sup> Salvatierra Comments at 1.

<sup>20</sup> FCC Form 301, Section III.

implementation. Use of our existing financial criteria, together with ranking on the basis of level of construction and operation, strikes a balance between the need for financial resources and the need for broadcast experience in an operational facility which best serves the public interest.<sup>21</sup> We also clarify, at Brunson's suggestion, that permittees included in the top-priority group are those who have an operational facility at the time ATV applications are accepted for filing, i.e., those permittees with program test authority as of that date.<sup>22</sup> We see no reason to exclude from the first-priority group broadcasters who in fact have constructed and operated facilities at the time ATV applications are accepted. Thus, in the event of a spectrum shortfall, we will rank initially eligible parties in the following order: (1) licensees and permittees with program test authority as of the date ATV applications are accepted; (2) other permittees; (3) parties with applications for a construction permit pending as of October 24, 1991.

B. Renewal Challenges: Reconsideration/Further Notice

11. The Second Report/Further Notice stated that existing broadcasters will be awarded an additional license for the ATV conversion channel, in lieu of treating the addition of an ATV channel as a major modification. We stated that we would not permit an NTSC license to be transferred independently of the associated ATV license, or vice versa.<sup>23</sup> We determined that an applicant for an ATV construction permit would not be allowed to retain priority eligibility status if its NTSC license is not renewed or is revoked while its application is pending. If either the broadcaster's NTSC or ATV license is revoked or not renewed for cause, we will automatically revoke the remaining license. Moreover, we will cease issuing new NTSC licenses once the ATV assignments to existing broadcasters are made. The Second Report/Further Notice determined that ATV licenses will be subject to competing applications filed during the appropriate renewal window. We further decided that ATV and NTSC licenses will be issued so that the license periods run concurrently.<sup>24</sup>

12. We tentatively agree with NOCI that a party challenging the renewal of an NTSC license should be permitted to file a supplemental

---

<sup>21</sup> We leave open the possibility of using financial requirements to distinguish between those applicants in the first-priority group in the case of insufficient spectrum to accommodate even that group, a question we defer until we decide on an allotment and an assignment methodology.

<sup>22</sup> Brunson Comments at 1-4. However, our cut-off date for those applicants to be included in the lower-priority eligibility ranking remains October 24, 1991.

<sup>23</sup> Second Report/Further Notice, 7 FCC Rod at 3344. The Second Report/Further Notice also stated that we will permit a party awarded an ATV license not associated with an NTSC channel pair to broadcast on an assigned ATV channel only (i.e., without an NTSC pair). Id.

<sup>24</sup> Second Report and Further Notice, 7 FCC Rod at 3345.

application for the ATV channel which would be contingent upon the grant of the challenger's NTSC application. We also tentatively agree that the contingent ATV application should not be subject to a second comparative hearing.<sup>25</sup> As stated previously, we do not intend to issue authorizations for new NTSC channels after initial assignments are made. We do propose, however, to issue new NTSC authorizations for a party successfully challenging the renewal of an incumbent NTSC broadcaster, and succeeding to substantially the same broadcast facility.<sup>26</sup> These proposals would apply to renewal challenges filed prior to construction and operation of an ATV facility, where an ATV channel has been awarded or where an ATV application is pending during the period before ATV assignments are made.

13. Earlier in this proceeding, we decided that it was important to preserve existing NTSC service to the public during the transition to ATV.<sup>27</sup> We have also determined that the public interest would be furthered by requiring simulcasting at the earliest appropriate date.<sup>28</sup> Permitting a successful NTSC renewal challenger also to receive the paired ATV channel would further these policies by enabling the ATV and NTSC channel pairs to remain together. We agree with MSTV, however, that the issues which NCCI raises are complex enough to merit full notice and comment and we thus seek comment on these tentative findings and proposals.<sup>29</sup> Parties are also invited to address the effect, if any, this proposal would have on our proposed ATV allotment/assignment plan, which thus far is predicated on existing sites held by existing broadcasters.<sup>30</sup> We also seek comment on the criteria which should be part of any contingent ATV application. Finally, we seek comment on whether these same policies should apply to renewal challenges filed after an NTSC licensee has been awarded an ATV license and its facility is operational, -- i.e., where both channels of an ATV/NTSC pair are on the air.

C. Dual Network Rule: Report and Order

14. The Second Report/Further Notice stated that we would suspend the

---

25 NCCI Reconsideration at 3. We tentatively agree with MSTV, however, that if a renewal challenger's NTSC application fails, its contingent ATV application would also fail. MSTV Opposition at 5 n.2.

26 We would also authorize a new NTSC station to replace an existing authorization where an incumbent's NTSC license had been revoked.

27 First Report and Order, 5 FCC Rcd at 5628.

28 Second Report/Further Notice, 7 FCC Rcd at 3355.

29 MSTV Opposition at 5. We decline to issue the clarifications of these issues which NCCI requests until we have the benefit of such additional comments. NCCI Reply at 3-4.

30 MSTV Opposition at 6.

television multiple ownership rules for ATV stations on a limited basis.<sup>31</sup> Existing licensees that are awarded an additional ATV channel may hold both their NTSC and ATV licenses, even though their signals overlap, and group owners may hold both NTSC and paired ATV channels, even though nationwide ceilings may be exceeded, until the time of full conversion. The Second Report/Further Notice also proposed temporary suspension of the dual network rule during the transition period to permit networks to give their affiliates a second feed for ATV.<sup>32</sup>

15. We agree with those commenters who believe that limited suspension of the dual network rule is a necessary step in the implementation of ATV.<sup>33</sup> As we stated in the Second Report/Further Notice, networks are likely to be critical sources of ATV programming at the outset of the ATV transition. Suspension of the rule will facilitate network involvement in ATV's development and help hasten ATV implementation.<sup>34</sup> We will, however, require that any second feed transmitted by a network in a given community be destined

---

<sup>31</sup> Second Report/Further Notice, 7 FCC Rcd at 3345. The television multiple ownership rules prohibit the award of licenses for TV broadcast stations that result in an applicant directly or indirectly owning or controlling (1) two TV stations with overlapping grade B contours, (2) more than 14 television stations, or 12 stations which are not minority-controlled, and (3) TV stations which have an aggregate national audience reach exceeding 30 percent, or which reach exceeds 25 percent and are not minority-controlled. 47 C.F.R. § 73.3555. See generally Notice of Proposed Rule Making, Review of the Commission's Regulations Governing Television Broadcasting, MM Docket 91-221, 7 FCC Rcd 4111, 4117-18 (Television Rulemaking) (1992).

<sup>32</sup> Second Report/Further Notice, 7 FCC Rcd at 3345. The dual network rule prohibits a network from simultaneously operating more than one network of television stations in identical or overlapping geographical areas. 47 C.F.R. §73.658 (g).

<sup>33</sup> See, e.g., CapCities Comments at 3-4; CBS Comments at 2-4. See also ATSC Further Comments at 2; Joint Broadcasters Comments at iv, 23 (also favoring suspension of the dual network rule).

<sup>34</sup> Second Report/Further Notice, 7 FCC Rcd at 3347. In implementing ATV, stations are not required to convert all of their production facilities to ATV by the construction deadline, but merely to emit an ATV signal. Second Report/Further Notice, 7 FCC Rcd at 3347. Networks or other sources of pass-through capability, requiring less than full studio plant conversion, have been assumed to be one of the earliest ATV capabilities an affiliate station will have. Darby Report at 8, 11, 15 (citing High Definition Television (PBS Engineering Preliminary HDTV Estimates) (Oct. 1990) (PBS Study) and A CBS Work-in-Progress (Oct. 23, 1990, Preliminary Results) (CBS Study), which assume pass-through capability to be the first step in ATV implementation). Thus, in order to facilitate the transition to ATV, permitting affiliates to pass-through network ATV feeds appears essential.

for a station broadcasting in the ATV mode.<sup>35</sup> We will also permit a network to send an ATV feed to a different licensee in the same community, where an NTSC affiliate fails to apply for and/or construct an ATV facility within the required time. Prohibiting a network from feeding an ATV signal to a second affiliate for ATV in a community where the NTSC affiliate has forfeited its right to an ATV channel would deprive viewers in that community of one network's ATV broadcast. It would also impede the transition to ATV by providing less incentive for consumers to purchase ATV receivers. SBA suggests that permitting networks to send an ATV feed to a separate station will harm a network affiliate.<sup>36</sup> As discussed infra, however, low receiver penetration at the start of ATV implementation is likely to make ATV advertising revenues relatively small compared to NTSC revenues.<sup>37</sup> Moreover, should this for some reason not prove true, and should ATV appear to be quite lucrative from the outset, it is likely that the network affiliate will be motivated to implement ATV and thus will not be subject to competition from a separate ATV affiliate. If conditions change as ATV implementation progresses, we can make appropriate adjustments to our policy at the time of our periodic reviews.<sup>38</sup> Accordingly, we temporarily suspend the dual network

---

<sup>35</sup> We discuss whether to modify the technical restrictions placed on the use of the conversion channel to permit other advanced uses compatible with the ATV standard we adopt infra Section VI.E.

As several of the commenters have noted, the application of the dual network rule to multiple NTSC channels is being addressed in Television Rulemaking, 7 FCC Rcd at 4117-18; CapCities Comments at 4-5; CBS Comments at 5-6. Our decision herein is subject to modification depending on the outcome of that proceeding.

<sup>36</sup> SBA Comments at 5-7. SBA also assumes that the "independent" carrying the ATV network feed would be left without programming when the NTSC affiliate ultimately converted to ATV. SBA Comments at 6-7. However, SBA offers no factual support for its assumption that such an independent would be unable to find suitable substitute programming, or even that the network would cease its relationship with such an "independent".

<sup>37</sup> See infra Section VII.

<sup>38</sup> See infra Section VI.C. In permitting a network to send an ATV feed to a separate station in the same market where the NTSC affiliate has failed to apply for or construct an ATV facility in the appropriate time frame, we recognize that the NTSC affiliate may in certain cases be able to apply for an ATV allotment in the years following and ultimately be able to offer an ATV channel to the public. In such cases, we will continue to permit a network to affiliate with the separate ATV station. We believe that this approach will provide an incentive for NTSC affiliates to construct ATV facilities as soon as possible. Moreover, despite the existence of separate ATV and NTSC affiliates in a community, the public likely would not be completely deprived of the benefits of simulcast programming. It appears likely that the same ATV network feed sent to NTSC/ATV station pairs would in all likelihood also be sent to any separate ATV affiliate.

rule in the circumstances above described until the time of full conversion.

### III. APPLICATION AND CONSTRUCTION PERIOD

#### A. General Application/Construction Deadlines: Reconsideration/Preliminary Decision

16. Four parties ask us to reconsider or defer our decision to set a deadline for existing broadcasters to apply for an ATV channel of two years from the time that an ATV Allotment Table or an ATV standard is effective, whichever is later, and a deadline for construction of an ATV station of three years. Broadcasters failing to meet these deadlines would forfeit their initial exclusive eligibility for a set-aside channel, but would still remain eligible to apply for any ATV channel at any later date.<sup>39</sup> Recognizing the numerous concerns of the broadcast industry, we are adjusting on reconsideration the application deadline from a two-year to a three-year period, and are providing for a total six-year application and construction period combined, so that a broadcaster applying early would have a correspondingly longer period of time in which to construct an ATV facility. We also schedule further reviews of this preliminary determination. These reviews will be conducted just prior to the start of the application period (at the time an ATV standard or an ATV Allotment Table is effective, whichever is later),<sup>40</sup> and again at the close of the three-year application period.

17. The advent of ATV raises a number of implementation issues for broadcasters. These issues include, for example, raising the necessary capital to invest in this new technology<sup>41</sup> and planning for the creation of a new station delivering a new form of television, a task that in some cases will entail locating a new site for an ATV transmitter.<sup>42</sup> In consideration of these factors, we believe it advisable to extend our application period from

---

<sup>39</sup> Second Report/Further Notice, 7 FCC Rcd at 3346. NAB, MSTV, Diversified, and Public Television have petitioned for reconsideration of this issue. Several parties filed pleadings in support of reconsideration. See, e.g., Morgan Murphy Reconsideration Comments, Freedom Reconsideration Comments, NASA Reconsideration Comments. The CBS Comments support NASA's Comments supporting the petitions for reconsideration. CBS Comments at 3 n.6. In addition, several parties in their comments and reply comments address these issues. For the sake of completeness, we also consider pleadings other than the reconsideration petitions.

<sup>40</sup> Second Report/Further Notice, 7 FCC Rcd at 3347.

<sup>41</sup> MSTV Reconsideration at 14; MSTV Reconsideration Reply at 1-5; Darby Report at v; Public Television Reconsideration at 16-17; NASA Reconsideration Comments at 1-4; Morgan Murphy Reconsideration Comments at 2.

<sup>42</sup> Cf. MSTV Reconsideration at 15 n.17 (channel specific implementation which requires a suitable site would be a problem in congested areas).

two to three years, as some suggest.<sup>43</sup> This should ease the risks broadcasters may face in investing in this new technology.<sup>44</sup> It also will permit additional time for ATV receivers to become available before broadcasters are on the air,<sup>45</sup> and permit more time for professional equipment to become available, should that be necessary.<sup>46</sup> This adjustment nevertheless continues

---

<sup>43</sup> Morgan Murphy Reconsideration Comments at 2-3; NASA Reconsideration Comments at 4. We reiterate that our existing rules governing extensions of time should provide reasonable and effective relief in extenuating circumstances, including local zoning problems and difficulties in obtaining an appropriate site. Second Report/Further Notice, 7 FCC Rcd at 3347-48. We also believe that these policies afford adequate relief for the local land use and safety problems which Sutro claims multiple tower operators face. Sutro Comments at 4. See also FIT Reply at 2. Moreover, to the extent adaptation of such facilities for ATV would involve complex technical planning issues, as Sutro claims, the additional year we permit for applications and the applying a "sliding scale" approach to construction times, discussed just below in this Section, should provide sufficient time for resolution of such problems. Sutro Comments at 2-3.

<sup>44</sup> MSTV Reply at 15-16.

<sup>45</sup> MSTV Reply at 17. FCC Advisory Committee on Advanced Television Service, Contribution to the Fifth Interim Report of the Implementation Subcommittee from Working Party 2 on Transition Scenarios at 12 (Jan. 31, 1992) (ISWP2 Fifth Interim Report) (receivers will be available two and a half to three years after selection of a standard, with system proponents having a six-to-nine-month advantage; report states that these results are being validated); in Fifth Interim Report of the FCC Advisory Committee on Advanced Television Service, Appendix I (Mar. 24, 1992); Market Penetration of HDTV, Working Party Five Planning Subcommittee, Advisory Committee on Advanced Television Service at 19-20 (June 20, 1992) (PSWP5 1992 Study) (most optimistic projection is that critical unit for ATV sets, the display, will be available 18 months after system selection). The modifications we make to our application/construction deadlines should satisfy the concerns of some parties that receivers be available within the timetable we establish. NAB Reconsideration at 20; MSTV Reply at 17.

<sup>46</sup> Contrary to NAB's concerns, studies of ISWP2 to date regarding antennas and towers indicate that with appropriate planning on the part of broadcasters, there is sufficient capacity within the transmitter/antenna manufacturing industry to meet broadcaster demand even within the five-year application/construction period we initially established. NAB Reconsideration at 17; FCC Advisory Committee on Advanced Television Service, Implementation Subcommittee Working Party 2 on Transition Scenarios, Transmitter and Antenna Manufacturer Survey, at 1 (Aug. 24, 1992) (ISWP2 Transmitter and Antenna Manufacturer Survey). ISWP2, however, describes potential limitations on the number of towers that can be built and antennas that can be installed, caused by manpower shortages and seasonal delays. ISWP2 Transmitter and Antenna Manufacturer Survey at 4-6. The modifications we make to our application and construction deadlines should lessen the significance of such limitations.

to safeguard against "warehousing" of valuable spectrum, a concern voiced by one party.<sup>47</sup> Thus, on balance, we believe that this modification aligns our deadlines more closely with projections about the ATV marketplace and encourages productive development of the new ATV technology.

18. In addition, we will permit broadcasters applying before the end of the three-year application period to have the remainder of the application period, as well as the subsequent three-year construction period, to build their ATV facility.<sup>48</sup> Upon reconsideration, we believe that we should recognize the extra efforts of those pioneers who apply first for ATV channels, by permitting them a longer period to resolve any implementation difficulties that such early entry may pose for construction.<sup>49</sup> In effect, construction deadlines will apply to existing broadcasters on a sliding scale, with those applying early having a longer portion of the six-year application/construction period to devote to construction of ATV facilities.<sup>50</sup> This modification should permit those applying early additional time to cope with any unforeseen problems that arise. It should also give group owners more flexibility to move manpower resources from station to station, resulting in economies for them.<sup>51</sup> It will also permit broadcasters to take advantage of

---

Moreover, we shall consider whether such limitations are likely to develop when we review the implementation deadlines at the time we establish an ATV standard/Allotment Table. At that point, we can gauge better how the technical attributes of a system may affect these issues, as well as whether manpower limitations appear likely to develop. See generally Memorandum by Jules Cohen and Associates (June 19, 1990), in CBS Study, Appendix A (new tower requirements projected for ATV believed to be exaggerated). Moreover, existing rules provide for extensions of time for lack of available equipment. Second Report/Further Notice, 7 FCC Rcd at 3347-48. In addition, we recognize that ISWP2 is still surveying other types of professional equipment manufacturers. The results of that study can be factored into our implementation reviews.

<sup>47</sup> Island Comments at 6.

<sup>48</sup> Cf. Diversified Reconsideration at 5 (construction deadlines should be staggered in reverse order of application filings but also advocating that initial application deadlines be staggered according to market size).

<sup>49</sup> See generally Comments of S. Merrill Weiss, Consultant (filed Dec. 20, 1991) (advocating sliding scale).

<sup>50</sup> We emphasize, however, that broadcasters must file an application for an ATV channel within the three-year application period, or else they will forfeit their initial eligibility status.

<sup>51</sup> NAB Reconsideration at 13; ISWP2 Fifth Interim Report at 5-6. In addition, to the extent a lack of broadcast consultants develops, as some predict, see NAB Reconsideration at 12-13; MSTV Reply at 19 n.10, this additional flexibility should help ease any such shortage.



economies in equipment, to the extent such economies materialize over time.<sup>52</sup> We also believe that this schedule permits adequate time for ATV programming to become available for broadcasters' use.<sup>53</sup> Contrary to some parties' views,<sup>54</sup> we now have adequate data upon which to base a preliminary determination of application and construction times.

19. In view of the significance of the initial steps in the transition to ATV and their scheduling for broadcasters, we will review the suitability

---

<sup>52</sup> The Darby Report projects considerable economies resulting from declining professional equipment costs for ATV. Darby Report at iv. However, it is unclear from the study whether these include costs for antennas and transmitters, which broadcasters would be required to purchase by the close of the initial implementation period, as well as for studio and production equipment, which are not subject to any regulatory deadlines. With respect to the former category, there is evidence in the record that these costs may be comparable to those for NTSC equivalent equipment, even as an initial matter. See discussion of antenna costs infra Section VII.B. Thus, the record as it now stands does not support parties' claims that the application/construction deadlines would result in higher than necessary prices of equipment needed to comply with this timetable. See, e.g., NAB Reconsideration at 12-16, 21-22. However, the modifications made herein to the application/construction deadline would allow broadcasters to take advantage of any such economies, should they, contrary to our expectations, occur. We also observe that, if the Darby Report is referring to the second category of equipment, including studio and production equipment, broadcasters are under no regulatory requirements to implement local production capacity by any deadline. Moreover, assuming stations would want to have ATV studio and production capability by the time they are required to convert, the report does not demonstrate that 15 years would be insufficient to permit economies to develop. Such economies would occur, in fact, if different stations converted their studio and production capabilities to ATV over time throughout the 15-year conversion period. The development of those economies would, in turn, ease the corresponding investment required of smaller (and possible later converting) stations, for which some parties express particular concern. MSTV Reconsideration Reply at 5; MSTV Reply at 15-16; NAB Reconsideration at 11-12, 22.

<sup>53</sup> FCC Advisory Committee on Advanced Television Service, Implementation Subcommittee Working Party 2 on Transition Scenarios, Report on Survey Regarding Software Availability at 1, 5 (Aug. 24, 1992) (ISWP2 Software Survey). Cf. PSWP5 1992 Study at 17-19 (cost of ATV programs no greater than film, although perfectionist efforts generated by detail possible in ATV tend to extend shooting time; ATV post-production results in savings over NTSC); see infra Section VI.C (discussing ISWP2 Software Study projections of availability of suitable ATV programming).

<sup>54</sup> See, e.g., NAB Reconsideration at iii, 4, 26; MSTV Reconsideration at 2, 4.

of these deadlines at the time of our periodic reviews.<sup>55</sup> We will review both the three-year application and the overall six-year application/construction period deadline at the time an ATV standard or Allotment Table is effective, whichever is later, and again review the overall six-year deadline at the close of the application period. After a standard is selected, we will be in a better position to judge factors relevant to initial implementation and expect to have the benefit of additional Advisory Committee reports on professional and consumer availability and costs.<sup>56</sup> At the time of our second review, at the close of the application period, we should be better able to discern whether the projections upon which we have relied are likely to be borne out in actual practice, and to make any necessary adjustments. For example, we should be able to assess factors such as the availability of ATV receivers, and the interchangeability of ATV and NTSC professional equipment, factors creating implementation incentives and economies, respectively, for broadcasters. We will also be able to evaluate our application/construction deadlines in light of other information relevant to the construction process, e.g., the transmission standard and the power levels (and associated costs) for operating under that standard,<sup>57</sup> or the amount of time it takes to develop technical specifications for producing consumer and professional equipment compatible with the ATV standard adopted.<sup>58</sup>

20. We decline to defer a judgment concerning an application/construction schedule, as some urge.<sup>59</sup> These deadlines will assist in our reclamation of the reversion channel by ensuring that broadcasters have an operational second facility to which they can ultimately convert fully to ATV. Although we recognize that some stations are likely to be market leaders

---

<sup>55</sup> We defer addressing parties' concerns regarding the interrelationship of the application period to assignments until we decide on an assignment methodology. See, e.g., MSTV Reconsideration at 11 n.5. See infra Section IV.A.

<sup>56</sup> See supra note 46. In addition to expected reports from ISWP2, SSWP3 is expected to produce reports on professional and consumer equipment costs. As is the case for modifications to our preliminary conversion and simulcasting timetables, we will modify our application/construction schedule upon a substantial showing that such a change would further the public interest. See infra Sections VI.C, VII.A.

<sup>57</sup> Freedom Reconsideration Comments at 7.

<sup>58</sup> NAB Reconsideration at 19 (expressing concern that delay in developing technical specifications can hold up ATV implementation). We note in this respect that ATSC has already begun organizing industry groups for this effort. See infra Section VIII.

<sup>59</sup> MSTV Reconsideration at ii, 1-3; NAB Reconsideration at i-ii, iv-v, 4, 26 (arguing for deferral of a decision on the construction period only). See also NASA Reconsideration Comments at 4 (seeking deferral of a decision on construction period only); MSTV Reconsideration Reply at 6; Freedom Reconsideration Comments at 7; MSTV Reply at 14.

in the implementation of ATV under the schedule we adopt,<sup>60</sup> we continue to believe such leadership may never emerge, at least in certain markets, unless we establish a clear framework for the ATV transition. In the absence of deadlines for application and construction, stations may unduly delay ATV implementation while waiting for others to move ahead.<sup>61</sup>

21. We also do not believe that preliminary establishment of a six-year period for application and construction, with built-in reviews before the period actually begins to run, and again at the close of the application period, will force broadcasters into premature or counterproductive investment, as some allege.<sup>62</sup> We adhere to our view that broadcasters need ample notice of the ATV implementation time periods. Moreover, failure to meet those time requirements will mean forfeiture of initial eligibility status only.<sup>63</sup> Should it develop, contrary to our expectations, that marketplace factors deter additional ATV investment in a given community within the time periods we set out, it is unlikely that other parties would apply for and construct an ATV facility in such an area. In such case, a broadcaster would face little actual risk of being foreclosed from the opportunity to convert at a later date to ATV on one of the set-aside channels. On the other hand, should the marketplace favor investment, we see no reason to foreclose other qualified parties from applying for an ATV station and from bringing this new technology to that community in an expeditious fashion if incumbents do not.

22. We also decline to leave determination of initial application and construction periods to individual broadcasters' decisions as some suggest.<sup>64</sup> As suggested by NTIA, our initial eligibility restriction will protect broadcasters from unfettered competition from new entrants who might have a strong economic interest in speeding ATV development and who would thereby create pressure for broadcasters to keep pace. As NTIA suggests, a timetable for ATV development substitutes for the market forces that would otherwise operate to speed ATV implementation.<sup>65</sup> As some of those who concur in our initial decision to establish a five-year implementation period state, such a fixed period will encourage rapid development of ATV transmission capability and delivery of this new technology to the American public.<sup>66</sup>

---

<sup>60</sup> NAB Reconsideration at 10.

<sup>61</sup> Second Report/Further Notice, 7 FCC Rcd at 3346.

<sup>62</sup> MSTV Reconsideration at 13, 14; MSTV Reply at 14. See also NASA Reconsideration Comments at 2.

<sup>63</sup> Second Report/Further Notice, 7 FCC Rcd at 3346.

<sup>64</sup> Brechner Comments at 5; GHI Comments at 4; Diversified Reconsideration at 3.

<sup>65</sup> NTIA Comments at 11.

<sup>66</sup> See, e.g., EIA/ATV Committee Comments at ii, 3-5.

23. Contrary to NAB's claim, Advisory Committee reports amply supported a five-year application/construction period and, a fortiori, the modified six-year period we now establish.<sup>67</sup> ISWP2 projects total implementation time, from "start to on-air",<sup>68</sup> as ranging from a minimum of about one and a half years, to a typical time of slightly over two years, if an existing tower is used, and from a minimum of slightly under two years to a typical time of slightly more than three-and-a-half years if a new tower is required.<sup>69</sup> Broadcasters can therefore apply for and construct new ATV facilities within the six-year period we establish.<sup>70</sup> In addition, our existing policies on granting extensions will provide relief for extraordinary delays in obtaining government approvals or resulting from litigation, responding to NAB's concerns on this point.<sup>71</sup>

24. Contrary to MSTV's position, we do not believe that the Darby Report, upon close analysis, necessarily conflicts with our implementation schedule.<sup>72</sup> MSTV stresses the Darby Report's projection of the costs per station of implementing full ATV capability, estimated at \$10-12 million, over

---

<sup>67</sup> NAB Reconsideration at 9-10, 14-21.

<sup>68</sup> For ISWP2, "[s]tart to [o]n-[a]ir time is from the station beginning the implementation process to the station being on the air with programming," in contrast to "CP to [o]n-[a]ir time," which runs "from issuance of the FCC [c]onstruction [p]ermit to the station being on the air with programming." ISWP2 Fifth Interim Report at 9.

<sup>69</sup> ISWP2 Fifth Interim Report at 9 (estimates for a "pass-through" facility).

<sup>70</sup> MSTV states that the Second Report/Further Notice improperly interpreted the CBS Study as finding that major markets will begin construction five years after selection of an ATV standard. MSTV states that in fact the CBS Study made no assumption as to the historical date that major markets would first begin construction, but merely labeled that point Year 1. MSTV Reconsideration at 4. The Second Report/Further Notice and the Notice upon which it was based, however, make no such explicit interpretation. See, e.g., Second Report/Further Notice, 7 FCC Rcd at 3354 n. 156; Notice, 6 FCC Rcd at 7027 n.33. We also observe that the Darby Report submitted by MSTV states that the CBS Study "hypothesizes that the largest 30 stations will begin construction immediately after the necessary regulatory standards are defined and regulatory clearances are achieved." Darby Report at 12.

<sup>71</sup> See generally Second Report/Further Notice, 7 FCC Rcd at 3347-48 & nn 63-65; NAB Reconsideration at 14, 16-17; MSTV Reply at 19 n.10. We thus also decline to adopt an even more flexible approach to granting extensions for delays in obtaining local government approvals or to preempt local land use controls, as Sutro asks. Sutro Comments at 2-3.

<sup>72</sup> MSTV Reconsideration Reply at 1-6.

a five-year application/construction period.<sup>73</sup> However, we are merely requiring that a station emit an ATV signal by the end of six years.<sup>74</sup> "Pass-through" of a network or other ATV signal source<sup>75</sup> would substantially satisfy our construction requirement. The Darby Report estimates "pass-through" costs at \$1.5 million per station. It notes that the large portion of the total \$10-12 million figure is attributable to ATV functionality in addition to pass-through capability.<sup>76</sup> That additional functionality may be phased in at any time. Thus, the estimated financial resources necessary to apply and construct within the six-year period we now establish are considerably less than the investment estimated for full studio and production facilities.

25. It may be true, as Darby projects, that initial ATV receiver penetration will be low.<sup>77</sup> Indeed, as PSWP5 suggests, ATV penetration will be directly limited by the rate at which local television stations convert their plant for ATV terrestrial transmission.<sup>78</sup> Until a substantial number of broadcast stations are on the air, therefore, ATV penetration, and consequently revenues from ATV operations, may well be low. Allowing broadcast stations to delay implementation, as MSTV suggests,<sup>79</sup> will do nothing to effectuate a consumer transition to ATV. Rather, such delay would act against public interest goals of accomplishing a swift ATV transition, and against broadcasters' goals of maximizing transitional revenues from their ATV channel.<sup>80</sup> In this connection we expect that alternative media (possibly including cable, VCR, DBS and computers) will begin ATV implementation

---

<sup>73</sup> MSTV Reconsideration Reply at 3. See, e.g., Darby Report at Table 6.

<sup>74</sup> Second Report/Further Notice, 7 FCC Rcd at 3347.

<sup>75</sup> Other non-network signal sources would be used, for example, by an independent station.

<sup>76</sup> Darby Report at iv.

<sup>77</sup> Darby Report at 29-31. We compare Darby's penetration scenario with those of the Advisory Committee, infra Section VI.B.

<sup>78</sup> PSWP5 1992 Study at iv.

<sup>79</sup> MSTV Reconsideration Reply at 6.

<sup>80</sup> Some parties stress that other industry sectors, not subject to our implementation deadlines, are likely to benefit from broadcasters' implementation of ATV. MSTV Reconsideration Reply at 1-5, 6-7; Darby Report at 47. However, unlike the television broadcast industry, none of these industries has been afforded the interim use of a valuable national resource, a television broadcast channel, solely for the purpose of implementing ATV. See generally First Inquiry, 2 FCC Rcd at 5125 (referring to MSTV petition which initiated this proceeding). We thus do not have the same responsibility to ensure spectrum efficiency with respect to these other industries. Nevertheless, we expect that alternative media will participate early and fully in the transition to ATV. See discussion Section IX.A.

promptly, thereby exerting additional competitive pressures on broadcasters to begin the transition to ATV. We believe that this expectation is reasonable, based on the steps which both the Advisory Committee and this Commission have taken to insure that our ATV standard is compatible with these alternative media,<sup>81</sup> and in light of some industries' participation in the ATV standard selection process and Advisory Committee activities.<sup>82</sup> In addition, contrary to some requests,<sup>83</sup> we adhere to our decision not to make ATV receiver penetration a factor in granting individual construction permit extensions or extending application/construction time.<sup>84</sup> As stated previously, we will take into account any new data regarding ATV receiver availability and projected penetration rates at the time of our reviews of the application and construction deadlines. In providing for this adjustment mechanism, we mean to allay concerns, such as those raised by MSTV, that broadcasters will be forced to make investments that are premature and ill-suited to marketplace realities.<sup>85</sup>

26. We believe that the above modifications are preferable to relaxing the financial qualifications a television broadcast applicant must demonstrate after applying for an ATV channel. NAB argues that relaxed financial requirements would permit broadcasters to take better advantage of economies of scope.<sup>86</sup> However, our extension of the application period and the sliding

---

<sup>81</sup> See infra Section IX; Second Report/Further Notice, 7 FCC Rcd at 3359-61.

<sup>82</sup> CableLabs, for example, entered into agreements with the Advanced Television Test Center, the Advisory Committee, and the FCC, whereby CableLabs and the Test Center would serve as fora for testing of the proponent ATV systems. See also infra Section IX.A; PSWP5 1992 Study at 9 (possible that inauguration of ATV cable service in some major metropolitan areas will take place shortly after selection of ATV standard and when display units are available).

<sup>83</sup> MSTV Reconsideration at 13-14; NAB Reconsideration at 6, 20; Diversified Reconsideration at 6. MSTV believes that if broadcasters drive receiver penetration, they will produce substantial external benefits for the equipment and programming sectors of the economy, but will not be able to share in these benefits. We believe, however, that the successful development of ATV is likely to require synergy among these various sectors. As we stated previously, the availability of ATV programming to the public is likely to be a major factor driving ATV receiver penetration. Unless broadcast stations are transmitting ATV programs, such programming is unlikely to be available in sufficient quantity to stimulate receiver sales. EIA/ATV Committee illustrates this point with the example of color television development, where receiver sales were very low until color programming became more available on an extensive basis. EIA/ATV Committee Comments at 4 n.7.

<sup>84</sup> Second Report/Further Notice, 7 FCC Rcd at 3348.

<sup>85</sup> MSTV Reconsideration at 14; MSTV Reply at 14.

<sup>86</sup> NAB Reconsideration at 8, 9.

scale we apply to construction deadlines will also do that.<sup>87</sup> Our existing rules require that a broadcast station applicant show that it has reasonable assurance of committed sources of funds to construct and operate a broadcast facility for three months.<sup>88</sup> To require less, as some suggest,<sup>89</sup> would permit the award of a construction permit to a broadcaster without reasonable assurance of its being able to fund the construction. This would increase the probability that applicants would "tie up" ATV spectrum for the three-year construction period without ever obtaining the funds needed to build the facility. This is contrary to one of the reasons we are restricting initial eligibility to existing broadcasters in the first place -- i.e., their ability to implement ATV swiftly. We similarly decline to modify our adherence to existing rules which do not permit an extension of a construction permit for inability to obtain financing,<sup>90</sup> as some ask.<sup>91</sup> As Salvatierra suggests, relaxation of this policy would jeopardize our goal of prompt implementation of ATV facilities.<sup>92</sup>

27. We also do not adopt a staggered approach to initial ATV implementation, with large markets implementing first and small markets last, as some parties ask.<sup>93</sup> We recognize that many small market stations produce less revenue than many large market stations, and consequently may find it more difficult to finance a transition to ATV. We believe that our extension of the application period and our "sliding scale" approach to construction

---

<sup>87</sup> NAB expresses concern about broadcasters' ability to apply early under a first-come, first-served assignment process without a more relaxed financial qualification requirement. NAB Reconsideration at 8, 9. As stated *supra*, note 55, we are deferring questions regarding the interrelationship of the application period with the assignment process until we adopt an assignment methodology. See *infra* Section IV.A.

<sup>88</sup> Harrison County Broadcasting Co., 6 FCC Rcd 5819, 5821 (Rev. Bd. 1991); FCC Form 301, Instructions, Section III.

<sup>89</sup> NAB Reconsideration at 8-9; GHI Comments at 2, 5. See also NASA Reconsideration Comments at 2-5 (arguing for both three year application period and relaxed financial requirement).

<sup>90</sup> Second Report/Further Notice, 7 FCC Rcd at 3348.

<sup>91</sup> NAB Reconsideration at 5, 26 n.39 (asking for extension policy that would permit a demonstration of financial incapability of constructing according to schedule, but of a scheduled capability by a date certain); Brechner Comments at 4-5, 6 (relief for financial hardship necessary for small market stations). See also GHI Reconsideration Comments at 2-3.

<sup>92</sup> Salvatierra Comments at 5-6.

<sup>93</sup> See, e.g., NAB Reconsideration at 27-29; Freedom Reconsideration Comments at 5-6; Morgan Murphy Reconsideration Comments at 3; NASA Reconsideration Comments at 4. See generally MSTV Reconsideration at 13.

periods should provide such stations adequate relief.<sup>94</sup> Should it appear, contrary to our expectations, that these time periods are insufficient, we have a mechanism in place to adjust them prior to the onset of implementation, and again at our projected midpoint. We also reiterate that failure to meet these deadlines forecloses initial eligibility only. A station will be free to petition for an available allotment or apply on a non-priority basis for any such channel allotments which are added at any time. Moreover, we do not believe that staggering by market size, as some commenters propose, would necessarily achieve the desired result. Even in the smallest markets, industry figures show that the most profitable group of stations, which accounted for one quarter of all stations, made an average of \$923,495 in pre-tax profits in 1990. In contrast, even in the top ten markets, the bottom quarter stations lost money on average.<sup>95</sup> For this reason, a staggered approach<sup>96</sup> would not necessarily target the correct stations, might cause administrative delays and ultimately could impede the activation of ATV service.

B. Noncommercial Stations: Reconsideration/Further Notice

28. Public Television states that noncommercial entities require substantial periods of time to arrange financing of the magnitude required for the ATV transition.<sup>97</sup> We recognize that noncommercial licensees, unlike commercial television entities, rely on government appropriations at the state and federal levels, on foundation grants, and on corporate and viewer donations. Given this fact, and in light of the unique role noncommercial stations play in our television broadcasting system, we invite comment on

---

<sup>94</sup> These modifications should make possible additional economies of scale and permit group owners more flexibility to construct their stations at different times within the operative deadlines, results similar to those which some parties argue staggering would afford. See, e.g., NAB Reconsideration at 11-12. We observe that the changes we adopt permit group owners to decide for themselves the chronology for station implementation in their group, as opposed to setting mandatory deadlines under a staggered approach.

<sup>95</sup> NAB/BCFM Television Financial Report at 1, 16 (1991). NAB tacitly acknowledges this when it argues that even if we set an early deadline for the largest markets only, we would still need to provide relief for small, financially less capable stations in the largest markets. NAB Reconsideration at 29 n.42.

<sup>96</sup> NAB Reconsideration at 28-29 (stagger application/construction with largest markets beginning first); Diversified Reconsideration at 2, 4-5 (stagger initial filing deadlines based on market size, with construction periods staggered in reverse order of filing).

<sup>97</sup> Public Television argues for deferral of the issue of application deadlines for noncommercial stations or, alternatively, for an application period greater than the two years adopted in the Second Report/Further Notice or, alternatively, for a relaxed financial qualification requirement. Public Television Reconsideration at 3, 13-15.



whether some additional measure of relief or further actions should be taken on their behalf to facilitate their entry into ATV.

29. While we decline to defer setting an application deadline for noncommercial stations until the time that we revisit our cut-over date for ATV conversion, as Public Television suggests,<sup>98</sup> we will consider whether special measures should be taken in consideration of the unique circumstances which noncommercial stations face. A variety of alternatives, ranging from a special application period to relaxed financial requirements, are possible.<sup>99</sup> This latter proposal would eliminate the pressure which noncommercial stations may face in obtaining funding within our application period. However, under this approach, if a noncommercial station ultimately fails to obtain the funding necessary to construct, its ATV channel would remain unused and unavailable to other qualified noncommercial applicants until the construction period expires. We might also intensify our coordination with funding agencies such as the National Telecommunications and Information Administration (NTIA). This might enable us to stagger noncommercial application deadlines so as to harmonize them with available funding. On the other hand, we question the feasibility of establishing such coordination with all possible funding sources. Such an approach would also add to the administrative burden of implementing ATV. We also observe that the modifications we make to our application and construction deadlines herein, as well as the establishment of a reserve, discussed below, should provide at least some of the relief which Public Television seeks.<sup>100</sup> We seek comment on the advisability of the above alternatives, and on any others that interested parties may propose.

#### C. Other Issues

##### 1. Assignment of Call Signs: Further Notice

30. After the adoption of a Table of Allotments, we will assign over 1880 new ATV channels.<sup>101</sup> Most of these assignments will be to existing broadcasters. These ATV channels will require some form of station

---

<sup>98</sup> Public Television Reconsideration at 16-17.

<sup>99</sup> Public Television Reconsideration at 3-4, 9, 12, 17. Public Television argues that noncommercial stations would be particularly constrained if a first-come, first-served assignment approach were adopted. Public Television Reconsideration at 26. As stated *infra* Section IV.A, however, we defer adoption of an assignment methodology until we have decided on an allotment approach.

<sup>100</sup> Moreover, our periodic reviews of the application/construction deadlines should enable us to take account of any conditions which our presumptive schedule does not adequately address.

<sup>101</sup> There are approximately 14,000 possible call signs currently available. Presently, we assign call signs on a first-come, first-served basis after a construction permit is awarded. 47 C.F.R. § 73.3550(h).